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Legislative Notice

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S. 1618 — Consumer Anti-Slamming Act

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Reported May 5, 1998, by the Senate Commerce, Science, and Transportation Committee, with amendments, by voice vote. S. Rept. 105-183.

NOTEWORTHY

- S. 1618 provides additional protection for consumers against "slamming" — a term used to describe the practice of changing a customer's telephone service provider without his or her knowledge or consent.
- The bill establishes stringent anti-slamming safeguards, as well as additional remedies and fines, that will discourage telecommunications carriers and resellers from engaging in this practice.
- It requires these companies to verify explicitly that a potential customer agrees to a change in his or her telephone exchange service or telephone toll service provider.
- In addition, the bill establishes expedited procedures for resolution of slamming complaints and imposes tough sanctions, including high fines and compensatory and punitive damages, for telecommunications carriers found guilty of slamming.
- The FCC is directed to submit a report to Congress revealing the 10 carriers that, over the last year, had the highest number of slamming complaints relative to the number of subscribers served.
- The FCC is required to issue a report within 180 days on telemarketing practices used by carriers to solicit carrier changes by subscribers.

BACKGROUND

"Slamming" is the unauthorized changing of a consumer's provider of telephone exchange service or telephone toll service. It is a problem that affects thousands of consumers across the country, and one that is expected to grow if stringent anti-slamming measures are not developed.

Consumers who are slammed often receive lower-quality service or are charged higher rates by their new carrier. Sometimes consumers are not even aware that they have been slammed until after they see their bills. Once they discover the problem, they often have to go through the aggravation of getting their service switched back to their original carrier and having their bills adjusted. During this process, many consumers find it difficult to secure compensation for any additional damages they may have suffered as a result of the slamming.

There are many ways in which a carrier can slam a consumer. Some long distance companies misrepresent themselves by claiming that they are calling on behalf of another company or are working with the local telephone company to consolidate local and long distance phone bills. Other companies use false third-party verification or negative option packages, with deceptive telemarketing practices, as a way to obtain "authorization" for carrier changes. Still others just claim falsely that they received the consumer's verbal consent for the switch.

The FCC first established safeguards to deter slamming when equal access was implemented in 1985. The FCC's initial slamming rules required long distance carriers to take steps to obtain signed Letters of Agency (LOA) from consumers before initiating a carrier change. As the long distance market grew more competitive, additional slamming rules were needed. In 1992, the Commission adopted procedures for verifying carrier-initiated telemarketing calls. Notwithstanding this verification requirement, slamming problems persisted. Responding to continuing consumer complaints, the Commission instituted a rulemaking and adopted rules to deter misleading LOAs in 1995.

Despite these measures, aggressive long distance telemarketers continue to mislead consumers. More than one-third of the written complaints submitted to the FCC's Consumer Protection Branch in 1995 related to slamming. Slamming complaints are the fastest-growing category of complaints reported to the FCC, having more than tripled in number since 1994. The FCC reports that slamming complaints have risen from 16,000 in 1996 to 44,000 in 1997 (a 175 percent increase). Also, the National Association of State Utility Consumer Advocates indicates that slamming is now the largest single consumer complaint received by many state consumer advocates, and as many as one million consumers are switched annually to a different provider without their knowledge or consent.

Section 258 of the Telecommunications Act of 1996 includes provisions to reduce slamming. Among other things, it provides that no telecommunications carrier shall submit or execute a change in a consumer's selection of a provider of telephone exchange service or telephone toll service except in accordance with the FCC's verification procedures. The law also provides that any telecommunications carrier that violates the FCC's verification procedures and that collects charges for telephone exchange service or telephone toll service from a consumer shall be liable to the consumer's original preferred carrier for an amount equal to all charges paid by the consumer to the unauthorized carrier. The FCC is now in the process of adopting rules to implement these provisions.

Notwithstanding these regulatory and statutory attempts to deter slamming, it remains a serious and growing problem. S. 1618 is designed to provide more effective ways to stop slamming.

Senator McCain introduced S. 1618 on February 9, 1998. Other slamming bills introduced in the 105th Congress are: S. 1051, introduced by Senator Campbell on July 22, 1997; S. 1137, introduced by Senator Durbin on July 31, 1997; S. 1410, introduced by Senator Reed on September 7, 1997; and S. 1740, introduced by Senator Collins on March 10, 1998.

BILL PROVISIONS

S. 1618 is designed to provide more effective ways to stop slamming. This legislation establishes stringent anti-slamming safeguards, as well as additional remedies and fines, that will discourage carriers from engaging in this practice. It prescribes definitive procedures for companies to follow in making carrier changes, provides alternative ways for consumers to obtain redress for having been slammed, and gives federal and nonfederal authorities the power to impose tough sanctions, including high fines and compensatory and punitive damages. These measures, in addition to those that the FCC and/or the states may develop, will ensure that consumers are afforded adequate protection against slamming.

Improved Protection for Consumers

- Establishes minimum verification requirements for submitting or executing a change in a subscriber's provider of telephone exchange service or telephone toll service. The bill requires telecommunications carriers to have the subscriber (person): acknowledge the type of service to be changed; affirm intent to select the provider; affirm that he or she is the subscriber or is authorized to select the provider for the telephone number in question; acknowledge that the selection of the provider will result in a change in the provider of that service; and provide such other information as considered appropriate by the FCC.

- Ensures that resellers are held responsible for their own slamming activities. The bill provides that resellers, not the underlying telecommunications carriers, are liable for the resellers' slamming violations, and therefore must comply with the verification requirements and are liable for damages and penalties.

- Establishes procedures to help the FCC and other relevant parties to determine whether a slamming incident has taken place. The bill establishes that additional requirements prescribed by the FCC shall: preclude the use of negative option marketing; provide for verification of a change in the telephone exchange service or the telephone toll service provider in oral, written, or electronic form; and require the retention of such verification for the time that the FCC considers appropriate.

- Notice to Subscriber: Provides that when there is a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, the carrier selected must notify the subscriber of the change, in writing, not more than 15 days after the change is made. Failure to notify is treated as a violation.

- Resolution of Complaints: Requires the FCC to prescribe a period of time, not exceeding 120 days, for a telecommunications carrier to resolve a complaint by a subscriber concerning an unauthorized change.

- Unresolved Complaints: If a telecommunications carrier fails to resolve a complaint within the time period prescribed by the FCC, then, within 10 days, the carrier must notify the subscriber in writing of his or her right to file a complaint (and how to file) with the FCC, as well as other rights and remedies available.

- Resolution by the FCC: Requires the FCC to establish a simplified process for resolving complaints and issue an order resolving a complaint within 150 days of receipt of the complaint with respect to violations of the law, and 90 days after it resolves a complaint with respect to penalties and damages.

- Penalties: The bill gives a considerable amount of discretion to the FCC and the courts in determining fault and imposing penalties and damages on carriers who make unauthorized changes. When a penalty is found, the FCC may award damages equal to the greater of $500 or the amount of actual damages, or treble damages at its discretion. Unless the FCC determines there are mitigating circumstances, a violation of the verification procedures is punishable by a fine of not less than $40,000 for the first offense, and not less than $150,000 for each subsequent offense.

- State Right-of-Action: Provides that a state may bring a civil action on behalf of its residents to enjoin such unauthorized changes, an action to recover for actual monetary loss or $500 in damages for each violation, or both such actions. If the court finds willful or knowing action on the part of carriers, the court may increase the award to not more than treble the amount available above. The U.S. district courts have exclusive jurisdiction over all civil actions. A state is required to provide the FCC with a copy of the complaint in any such civil action.

- FCC Report to Congress: Requires the FCC to submit a report to Congress by October 31, 1998, on the 10 carriers that, over the last year, had the highest number of slamming complaints relative to the number of subscribers served.

Report on Telemarketing Practices

- Section 2 of the bill requires the FCC to issue a report within 180 days on the telemarketing practices used by carriers or their agents for the purpose of soliciting carrier changes by subscribers. The FCC must include findings on the extent to which imposing penalties on telemarketers would deter slamming; the need for rules requiring third-party verification of changes in a subscriber's selection of a provider; and whether wireless carriers should continue to be exempt from the verification and retention requirements. If the FCC determines that such practices are being used with the intention to mislead or deceive subscribers, then it must initiate a rulemaking to prohibit such practices with 120 days after completion of its report.

ADMINISTRATION POSITION

No Statement of Administration Policy had been received at press time.

COST

The Congressional Budget Offices estimates that the net budgetary impact of implementing this bill would not be significant. Because the bill would establish new penalties that could affect receipts, pay-as-you-go procedures would apply. S. 1618 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments. Although the bill would impose new private-sector mandates, CBO estimates the costs would fall below the statutory threshold.

Estimated cost to the Federal Government: CBO estimates that the FCC would spend about $6 million annually to implement this bill, assuming appropriation of the necessary amounts. Because current law authorizes the FCC to collect fees from the telecommunications industry sufficient to offset the cost of its enforcement program, CBO assumes that these additional costs would be offset by an increase in collections credited to annual appropriations for the FCC. Thus, the net effect on discretionary spending would be negligible.

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